

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY MORRIS,

Petitioner,

v.

Case No. 03-73380

WARDEN CASON,

Honorable Patrick J. Duggan

Respondent..

ORDER VACATING ORDER
DENYING MOTION FOR RECONSIDERATION
ISSUED ON MARCH 16, 2005

At a session of said Court, held in the U.S.
District Courthouse, City of Detroit, County of
Wayne, State of Michigan, on October 20, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On January 6, 2005, Petitioner filed a motion for depositions pursuant to Rule 27(b) of the Federal Rules of Civil Procedure. On February 14, 2005, this Court issued an Order denying Petitioner's motion.

On February 28, 2005, Petitioner filed a motion for reconsideration.

On March 16, 2005, this Court issued an Order denying Petitioner's motion for reconsideration.

As a result of a clerical error on this Court's part, the Order denying the motion for reconsideration was sent to an individual other than Petitioner.

Petitioner contends that he did not receive the Order denying his motion for reconsideration until June 17, 2005.

On June 29, 2005, Petitioner filed an appeal with the United States Court of Appeals for the Sixth Circuit.

Because Petitioner was appealing an Order entered on March 17, 2005, the appeal was dismissed by the Sixth Circuit. The Sixth Circuit ruled that because the Petitioner had not timely filed the appeal within 30 days of the entry of the Order, the Sixth Circuit lacked jurisdiction to hear the appeal.

Presently before the Court is Petitioner's "Motion to Reopen the Time to File an Appeal" pursuant to Rules 4, 5, and 6 of the Federal Rules of Appellate Procedure.

This Court does not believe that Rules 4, 5, or 6, give this Court the authority to extend the time for the filing of the appeal or for reopening the time to file an appeal. Petitioner's motion is clearly beyond the time limits permitted under Rule 5 relating to "extensions of time" and Petitioner's motion to reopen the time to file an appeal is clearly beyond the time permitted. A motion to reopen the time for filing an appeal must be filed within 180 days after the order is entered or within seven days after the moving party received notice of the entry, whichever is earlier. Clearly this time period has expired.

However, Rule 60(a) of the Federal Rules of Civil Procedure provides: "Clerical mistakes in . . . orders . . . may be corrected by the court at any time of its own initiative. . . ." This Court believes that its clerical mistake in failing to send Petitioner a copy of the Order of March 16, 2005, may have deprived Petitioner of his right to seek appellate review of such order. The Court therefore believes, in the best interests of justice, that the Order of

March 16, 2005 should be vacated and re-entered as of this date so that Petitioner's time for appeal will begin to run from the date of "re-entry" of the Order denying Petitioner's motion for reconsideration.

For the reasons set forth above,

IT IS HEREBY ORDERED that the Court's Order of March 16, 2005, denying Petitioner's motion for reconsideration is **VACATED**.

IT IS FURTHER ORDERED that Petitioner's Motion to Reopen the Time to File an Appeal is **DENIED AS MOOT**.

SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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